



27 JUL 2007

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In re Application of :
TRIBELSKY et al. :
U.S. Application No. 10/566,992 :
PCT No.: PCT/IL04/00717 :
Int. Filing Date: 04 August 2004 :
Priority Date: 04 August 2003 :
Attorney Docket No.: P7785US :
For: IN-LINE TREATMENT OF LIQUIDS :
AND GASES BY LIGHT IRRADIATION :

DECISION ON REQUEST

This decision is issued in response to applicant's "Renewed Petition to add Inventors under 37 CFR 1.497(d) and to Suspend the Rules under 37 CFR 1.183" filed 23 April 2007 which is being treated as a Request under 37 CFR 1.497(d). Additionally, this decision is issued in response to applicant's "Petition under 37 CFR 1.47(a)" filed 23 April 2007.

BACKGROUND

On 04 August 2004, applicant filed international application no. PCT/IL04/00717 which claimed a priority date of 04 August 2003. The international application named Zamir Tribelsky as an applicant/inventor. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 04 February 2006.

On 02 February 2006, applicant filed a transmittal letter for entry into the national stage accompanied by, *inter alia*: the requisite basic national fee; a copy of the international application; and a preliminary amendment.

On 09 August 2006, the United States Designated/Elected Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. The notification set a two-month time limit in which to respond.

On 04 January 2007, applicant filed a request under 37 CFR 1.497(d) which included a declaration executed by: Ytzhak Rozenberg; Uri Levy; and Joseph Rabani. Additionally, applicant submitted a petition under 37 CFR 1.47(a) to accept the application without the signature of inventor, Zamir Tribelsky. In a decision dated 04 January 2007, applicant's request under 37 CFR 1.497(d) was dismissed without prejudice.

On 23 April 2007, applicant filed "Renewed Petition to add Inventors under 37 CFR 1.497(d) and to Suspend the Rules under 37 CFR 1.183."

DISCUSSION

Request under 37 CFR 1.497(d)

As defined in 37 CFR 1.9(a)(3), a U.S. national stage application must first comply with the requirements of 35 U.S.C. 371(c) to constitute a "nonprovisional" application, therefore, applicants' request will be treated under 37 CFR 1.497(d). The present submission seeks to correct the inventorship so as to add inventor Ytzhak Rozenberg; Uri Levy; and Joseph Rabani to the application. Where, as here, the inventorship in the national stage declaration is not consistent with the inventorship in the international application, applicants must correct the inventorship pursuant to 37 CFR 1.497(d), which states the following:

(d) If the oath or declaration filed pursuant to 35 U.S.C. 371(c)(4) and this section names an inventive entity different from the inventive entity set forth in the international application, the oath or declaration must be accompanied by:

(1) A statement from each person being added as an inventor and from each person being deleted as an inventor that any error in inventorship in the international application occurred without deceptive intention on his or her part;

(2) The processing fee set forth in § 1.17; and

(3) If an assignment has been executed by any of the original named inventors, the written consent of the assignees (see § 3.73(b) of this chapter).

(4) any new oath or declaration required by paragraph (f) of this subsection.

Items (1), (2) and (4) were previously satisfied.

As to item (3), the submission included the consent of the assignee to the requested correct of inventorship, in the form required under 37 CFR 1.497(d)(3) and 37 CFR 3.73. Accordingly, applicant has now satisfied all the requirements to correct the inventorship herein.

Applicant's request to correct inventorship under 37 CFR 1.497(d) is **GRANTED**.

The inventorship herein is corrected to add Ytzhak Rozenberg; Uri Levy; and Joseph Rabani as additional inventors of record. Based on this correction, the declaration filed 04 January 2007 is now acceptable under 37 CFR 1.497.

Petition under 37 CFR 1.47(a)

Petitioner states that Zamir Tribelsky has refused to sign the application. A grantable petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17; (2) a statement of the last known address of the nonsigning inventor; (3) an oath or declaration by the other inventors on behalf of the other inventors on behalf of themselves and the nonsigning inventor; and (4) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort.

Applicant here has submitted the appropriate petition fee. Item (1) is therefore satisfied.

Regarding item (2), applicant has provided the last known address of the nonsigning inventor. Accordingly, item (2) is therefore satisfied.

Regarding item (3), section 409.03(a) of the Manual of Patent Examining Practice (MPEP) states that:

An oath or declaration signed by all the available joint inventors with the signature block of the nonsigning inventor(s) left blank may be treated as having been signed by all the joint inventors on behalf of the nonsigning inventor(s), unless otherwise indicated.

Here, applicants have filed a declaration executed by three of the four inventors and including an unsigned signature box identifying the nonsigning inventor. This declaration is treated as having been executed by the available inventors on their own behalf and on behalf of the nonsigning inventor. Item (3) is therefore satisfied.

Regarding item (4), the petition asserts that the nonsigning inventor has refused to execute the declaration. Before a refusal to execute the application can be claimed, section 409.03(d) of the MPEP requires that the nonsigning inventor be provided with a copy of the complete application, including specification, drawings and claims. The MPEP also requires "a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made."

A review of the present petition reveals that applicants have satisfied item (4), in that the applicants have shown that a bona fide attempt was made to present the application papers, including the specification, claims, and drawings to Zamir Tribelsky. The steps taken by Amir Cohen are sufficient to show that Zamir Tribelsky has refused to execute the application. Item (4) is therefore satisfied.

Based on the above, applicant has satisfied all the requirements for a grantable petition under 37 CFR 1.47(a).

CONCLUSION

Applicant's request to add inventors Ytzhak Rozenberg; Uri Levy; and Joseph Rabani under 37 CFR 1.497(d) is **GRANTED**.

Applicant's request under 37 CFR 1.47(a) is **GRANTED**.

Applicant's petition under 37 CFR 1.183 is **DISMISSED** as moot.

A review of the application papers reveals that applicants have completed all the requirements of 35 U.S.C. 371 for entry into the national stage. This application will be given an international application filing date of 04 August 2004 and a date of 04 January 2007 under 35 U.S.C. 371.

A notice of the filing of the application under 37 CFR 1.47(c) will be published in the Official Gazette.

The application is being returned to the United States Designated/Elected Office for further processing in accordance with this decision.



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